



Bernalillo County, NM

Economic Development Financing Policy & Procedures

Approved: January 28, 2014

ECONOMIC DEVELOPMENT DEFINED

No single definition incorporates all of the different strands of economic development. Bernalillo County describes economic development in terms of objectives. These are most commonly defined as the creation of jobs and wealth and the improvement of quality of life. Economic development is a process that influences growth and restructuring of our economy and therefore enhances the economic well-being of our community. In the broadest sense, Bernalillo County seeks to develop economic development policies that encompass three major areas:

1. Policies that government undertakes to meet broad economic objectives including inflation control, high employment and sustainable growth.
2. Policies and programs to provide services including building roadways, managing parks, developing affordable or workforce housing and providing medical access to the disadvantaged.
3. Policies and programs explicitly directed at improving the business climate through specific efforts, business finance, marketing, neighborhood development, business retention and expansion, technology transfer, and real estate development, etc.

The result of economic development is improving the economic well-being of our community through efforts that cause job creation, job retention, tax-base enhancements, and increase quality of life.

Note: Any future changes, additions or deletions to any portion of this document is at the discretion of the County Manger and/or Economic Development Director, who may consider exceptions to these Policies and Procedures subject to governing body approval.

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I. ECONOMIC DEVELOPMENT FINANCING POLICY & PROCEDURES

The Bernalillo County Economic Development Department recognizes the need for establishing a well-managed Economic Development Financing Policy. This Bernalillo County Economic Development Financing Policy & Procedures document is designed to set forth the parameters for issuing conduit bonds and monitoring the outstanding conduit bond portfolio. It provides guidance to decision makers regarding the parameters in which conduit bonds may be issued, the type and amounts of conduit bonds permitted, the timing methods of sales that may be used, and structural features that should be considered. Adherence to the Economic Development Financing Policy works to ensure that Bernalillo County's credit quality is protected. It is the intent of the Economic Development Department to establish an Economic Development Financing Policy to:

- A. Ensure high-quality economic development financing decisions,
- B. Impose order and consistency in the conduit bond financing process,
- C. Promote consistency and continuity in the decision-making process,
- D. Provide all disclosures required by law to promote transparency, and
- E. Ensure that conduit-financing decisions are viewed positively by Bernalillo County Commissioners, the investment community, and the property taxing agencies.

II. GENERAL POLICIES

- A. The County shall not pledge any County revenues to its conduit bond financings or guarantee indebtedness of others. Furthermore, the County has no legal obligation to repay bondholders of conduit financings issued under its authority. The conduit financings are not the general obligation of the County and all payment obligation remains with the applicant. In addition, no County gross receipts tax or other revenue stream may be pledged.
- B. In its capacity as an issuer of conduit bonds, whereby the County issues bond on behalf of a qualified for-profit or not-for-profit company, the County does not undertake financial risk because the bonds issued are repaid solely by the revenues of the underlying project. The bonds are not general obligations of the County and all payment obligation remains with the applicant. However, any defaults suffered may indirectly impact the County's reputation in the bond market.
- C. In order to encourage economic development within Bernalillo County, the County may issue conduit revenue bonds on behalf of eligible entities. This may qualify the applicant, depending on compliance with applicable federal and state laws, to benefit from lower rates on the project debt due to the following:
 - 1. An exemption of interest on the bonds from federal income tax,

2. An exemption of interest on bonds from New Mexico income tax, and
 3. An exemption from state and local property or gross receipts tax for conduit bond-financed facilities.
- D. The Economic Development Department will evaluate the impact of proposed conduit financing upon the County. Conduit financing shall be collateralized by benefited company assets. The acceptable forms of collateral are as follows:
1. The pledge of real property and/or improvements,
 2. Letter of credit from a financial institution,
 3. Surety Bond, and
 4. Other tangible assets acceptable to the County, if the purchaser of conduit bonds has a written plan.
- E. The following forms of collateral shall not be accepted by Bernalillo County:
1. Intellectual property,
 2. Future earnings from royalties, or
 3. Any other non-tangible assets.

III. GENERAL OBJECTIVES

- A. The County identifies three goals for economic development:
1. Job growth in excess of population growth,
 2. Increasing the share of the tax base coming from non-residential growth, and
 3. Increasing career opportunities by attracting high-skilled jobs in expanding industries.

IV. ECONOMIC DEVELOPMENT OBJECTIVES

- A. The Economic Development Department is committed to improving the quality of life for all residents. The County commits to:
1. Encouraging existing industry to expand,
 2. Assisting new business start-ups,

3. Foster retention of companies within Bernalillo County,
4. Recruiting new companies from out-of-state and internationally,
5. Attracting high technology and research-based businesses, and
6. Offering workforce training and entrepreneurial development to Bernalillo County residents.

V. COUNTY INDEMNIFICATION

- A. This policy expressly permits the County to issue bonds in accordance with Bernalillo County Economic Development Financing Policy & Procedures. In order for the County to fulfill its statutory role, all issues must provide for indemnification of the County.
- B. Compliance with the indemnification requirements of the County is essential to securing the Board of County Commissioners' (BCC) approval of the proposed bond financing, and the County will not participate in a bond financing if its indemnification requirements are not met. The County will not take any responsibility for due diligence investigations or disclosure, and the County's Issuer's Counsel specifically disclaims any responsibility for such disclosure in its opinion.
- C. The existence of credit enhancement does not obviate the obligation to indemnify the County. Credit enhancement does not release the underwriter, placement agent, remarketing agent or comparable entity of the obligation from abiding by covenants in the conduit bond documents.
- D. A clear statement of the indemnification of the County must appear in all relevant Conduit Bond Documents (Loan Agreement, Bond Purchase Agreement etc.). Inconsistency with indemnification provisions in bond documents may undermine their protective purposes. In addition, the Official Statement, Offering Memorandum and other disclosure documents must clearly state that the County has only reviewed or approved particular information relating to the County, under specific headings. Furthermore, the Bond Purchase Agreement must articulate the County's non-participation in the preparation of the offering document, except for the information relating to the County under specific headings.

VI. ECONOMIC DEVELOPMENT INCENTIVES AND ELIGIBILITY CRITERIA

- A. The Economic Development Department is committed to the promotion of quality development in Bernalillo County and to improving the quality of life for its citizens. To help meet these goals, the County will consider providing incentives to stimulate economic development within the County. One or more incentives may be used, depending on the application. These incentives include, but are not limited to the following:
1. Conduit Bonds/Loans/Grants: Provide capital to existing and new businesses for projects related to new growth and expansion, assisting with business relocation expenses, and other types of assistance which further the community's economic development goals.
 2. Infrastructure: Provide infrastructure improvements related to needs of businesses or to assist in making property useable and available for businesses or other designated economic development activities (i.e. infrastructure for industrial property, etc.).
 3. Tax Increment Financing: The County may utilize Tax Increment Financing (TIF) for the purpose of encouraging projects with an emphasis on redevelopment activities.
 4. Property Tax Exemption: The County may utilize property tax exemption to spur investments.
 5. Gross Receipts Tax Exemption: The County may purchase equipment and other personal property (furniture, fixtures and other disposable assets) for the facility with IRB proceeds.
 6. IRS Tax Exemptions of 1986.
- B. The proposed development, redevelopment and/or expansion must create or retain jobs within the County, and provide taxable property improvements within the County.
- C. The project must meet the overall development goals, building codes, and other applicable ordinances of the County.
- D. The following criteria will be considered in determining what level of economic incentives shall be provided to the applicant:
1. Increase or preserve tax base,
 2. Provide employment opportunities in the County,
 3. Provide, construct, or help acquire public facilities,

4. Help develop or renew blighted areas,
5. Help provide access to services for County residents, and
6. Finance or provide public infrastructure.

VII. PROPERTY TAX EXEMPTION LIMITATIONS AND TERMS OF PROPERTY TAX EXEMPTION

- A. The total annual commitment for Bernalillo County property tax exemption will not exceed one percent of the existing County levy (general fund).
- B. Term is up to 30 years for IRB.
- C. There will be a minimum Payment In Lieu of Taxes (PILT) payment.
- D. Total County exemption for any one project regardless of the number of property tax parcels involved will not exceed \$600,000 over the term of the agreement or \$30,000 in any given year.
- E. Property within a tax-increment financing district does not qualify
- F. The abatement period for a project shall be determined by the amount of new capital investment in the County. Capital investment shall include expenditures for land, building or personal property subject to ad valorem taxation.
- G. New and Existing Businesses: The normal term of exemption for each stand-alone project where the applicant is an Existing Business is determined according to the following schedule:

<u>Capital Investment</u>	<u>Term of Financing/Abatement*</u>
\$1 million but less than \$3 million	15 years
\$3 million but less than \$5 million	20 years
\$5 million but less than \$7 million	25 years
Greater than \$7 million	30 years

*The Board of County Commissioners reserves the right to alter schedule.

VIII. ECONOMIC DEVELOPMENT FINANCING OPTIONS

- A. Industrial Revenue Bonds (IRBs) are used to finance the acquisition, construction, enlargement or improvement of industrial development facilities, pursuant to Sec 4-59-1 et al NMSA 1978.
- B. Industrial Development Projects (IDPs) are tax-exempt securities issued by Bernalillo County to finance growth and/or expansion projects for manufacturing and processing companies at low-cost and low-interest financing.
- C. Project Revenue Bonds (PRBs) are used as a source of financial assistance to economic development projects in Bernalillo County. Project revenue bonds issued by Bernalillo County will be limited to companies and non-profit 501c3 organizations that show a significant benefit to the County pursuant to Sec 4-62-11 et al NMSA 1978. Currently, Bernalillo County does not offer Project revenue bonds to Charter Schools.

IX. INFORMATION REQUIRED FOR FISCAL IMPACT ANALYSIS

- A. Answers to these questions should be submitted separately from the project plan.
 - 1. State the type/nature of project operations.
 - 2. State the total number of new jobs to be created because of the proposed IRB project, a total gross payroll and an estimated annual pay increase over term of project financing.
 - 3. State the number of new employees by title or job classification and respective salary.
 - 4. Describe optional employee benefits by either amount or percentage of gross pay. If employees contribute to such benefits, indicate their contributions in amount or percentage.
 - 5. Estimate the total annual expenditure of goods and services locally procured, and identify such goods and services (only those over \$10,000 per year). Include an estimated annual increase in total expenditure. Include annual expenditures subject to New Mexico Gross Receipts Tax.
 - 6. Estimate the total annual expenditure of goods procured out-of-state and subject to the New Mexico compensating tax, and an estimated annual increase in total expenditure.
 - 7. State the costs of land, site improvement, and building.

8. State the total costs of equipment, fixtures, and furnishings to be purchased with the proceeds of the bond, and the amount of such purchases in New Mexico and out-of-state, respectively.
9. If the proposal involves the manufacturing of goods, estimate the amount of capital expenditures to be qualified for the New Mexico investment tax credit.

X. CONDUIT FINANCING APPLICATION REVIEW PROCESS (County Review and Credit Analysis)

The County Economic Development staff, using the application and supporting information, will review the application for completeness and will analyze the financial viability of the project. The County staff in making its recommendation to the Debt Policy Committee will undertake the following (See Exhibit B):

- A. Debt Management: The County will examine the applicant's debt management history and the credit-worthiness of any pledged revenue will be examined. All debt obligations secured by the revenues pledged will be analyzed. To assess an applicant's debt position, the following factors may be evaluated:
 1. The total dollar amount of the debt owed by the applicant, including the project revenue bonds being requested,
 2. Interest rate based on risk assumptions relative to perceived risk,
 3. Amortization period based on useful life of assets being financed,
 4. Cash flow coverage,
 5. Loan collateral requirements, including collateral value, loan to value and lien position, and
 6. Proposed bond closing documents and agreements.
- B. Credit Analysis: County Economic Development staff/Independent Contractor will review the bondholder security offered by the applicant and analyze the credit quality of the applicant, taking into consideration:
 1. Educational and work history of the officers, managers, members or partners of the applicant,
 2. The applicant's experience and position in the industry and in managing similar projects,

3. Assets and liabilities of the applicant,
 4. Existence of liens or encumbrances on the applicant's assets, and
 5. Debt to equity or other applicable ratios.
- C. Financial Position: Financial performance and liquidity are key factors in the evaluation of any applicant and the County's evaluation will include the following:
1. All internal reserve funds to determine whether the applicant has sufficient resources to cover unexpected costs,
 2. Applicable revenue projections and the timing of all receivables to determine the ability of the applicant to service debt, and
 3. Predictability of cash flow, and
 4. Revenues that will be used to repay the bonds will be analyzed to determine affordability of the project and the level of flexibility that exists.
- D. Application Review Process: In addition to performing a financial analysis as referenced above, the County Economic Development staff, Independent Contractor, and/or Financial Analyst will be responsible for ensuring the Application meets all federal and state laws, and the Rules and Regulations of the Financing Policy & Procedures. This includes, but is not limited to, the following duties:
1. Preliminary determination of tax-exempt status of the Bonds based upon qualifications of project revenue bonds and any realized exemption from federal income taxation and state income taxation. Include an evaluation on whether an allocation of the State's private activity bond volume cap is required. Final determination will be made by Bond Counsel, who must render an opinion at or before closing that the bonds are exempt from federal taxation.
 2. For those projects seeking GRT and/or property tax exemption, confirm that the required Opt-In Agreements by and between the County Economic Development staff and local governments where project is located have been executed,
 3. Determine eligibility of State or Local Tax Exemptions,
 4. For those projects seeking a GRT or property tax exemption, ensure that an Economic Impact analysis has been performed and that the project being financed provides sufficient economic development benefits to warrant the financing assistance,
 5. Execute all waivers of confidentiality required for public consideration of the economic development bond issuance application by the BCC,

6. Provide the applicant with written confirmation the structure and readiness to proceed requirements following BCC approval,
 7. Review all bond closing documents and agreements, facilitate the final bond documents, and obtain the signature of the authorized officers of the County once all conditions have been met, and
 8. After bond closing, authorize disbursements, track bond payments and monitor the Economic Development Loan Covenants and quarterly financial reports.
- E. Third Party and Review: The County, at its sole discretion, may require an independent third-party review of the entire project evaluation and bond issue structuring at the applicant's expense prior to making a recommendation the Economic Development Committee.
- F. Economic Impact Analysis: For projects seeking GRT and property tax exemptions, an Economic Impact Analysis will be performed to determine the direct and indirect impact of a proposed project so that quantifiable benefits resulting in a net return to the County can be calculated.

XI. REMEDIAL ACTION RULE (WRITTEN UNDER SECTIONS 141 & 145 OF THE IRS CODE AND SECTIONS 1.141-12 OF THE REGULATIONS)

- A. The purpose of this section is to set forth certain written procedures that may be required to be taken by the Bernalillo County, New Mexico (the "Issuer") and Company A (the "Series A Lessee") and Company B (the "Series B Lessee," and together with the Series A Lessee, the "Lessees") with regard to the issuance by the Issuer of its aggregate principal amount of Industrial Revenue Bonds (Tax-Exempt) (Company A Project) Series 2012A (the "Series 2012A Bonds") and its aggregate principal amount of Industrial Revenue Bonds (Tax-Exempt) (Company A Project) Series 2012B (the "Series 2012B Bonds," and together with the Series 2012A Bonds, the "Bonds"). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Tax Certificate to which this section is attached.
- B. The maintenance of the status of the Bonds as tax-exempt obligations for purposes of federal tax law depends upon the Lessees' compliance with the requirements set forth in the Internal Revenue Code of 1986 as described in the Tax Certificate.
- C. Written Procedures Regarding Remedial Action:
1. If the Lessees take any Deliberate Action subsequent to the issuance of the Bonds, then the Lessees will consult with Bond Counsel regarding permissible Remedial Actions that may be taken to remediate the effect of any such Deliberate Action upon the federal tax status of the Bonds.
 - a. Conditions to Availability of Remedial Actions. Unless Bond Counsel shall advise the Lessees otherwise, none of the Remedial Actions described in this

Appendix shall be available to the Lessees to remediate the effect of any Deliberate Action with respect to the Bonds unless the following conditions have been satisfied:

- 1) The Lessees, as of the date the Bonds were issued, did not expect to satisfy either the Private Business Tests or the Private Loan Financing Test of Section 141 of the Code and the Regulations thereunder for the entire term of the Bonds,
 - 2) The average maturity of the Bonds did not, as of the date the Bonds were issued, exceed 120% of the average economic life projects financed or refinanced by the Bonds (the “Projects”),
 - 3) Unless otherwise excepted under the Regulations, the Lessees shall deliver a certificate, instrument or other written records satisfactory to Bond Counsel demonstrating that the terms of the arrangement pursuant to which the Deliberate Action is taken is bona fide and arm’s length, and that the nongovernmental person using the Projects as a result of the relevant Deliberate Action will pay fair market value for the use thereof,
 - 4) Any disposition must be made at fair market value and any Disposition Proceeds actually or constructively received by the Lessees as a result of the Deliberate Action must be treated as Gross Proceeds of the Bonds and may not be invested in obligations bearing a yield in excess of the Bond Yield subsequent to the date of the Deliberate Action, and
 - 5) Proceeds of the Bonds affected by the Remedial Action must have been allocated to Expenditures for the Projects before the date on which the Deliberate Action occurs.
2. Remedial Actions may include the following types of actions and are subject generally to the below conditions. Please note that these procedures apply where the relevant obligations are all maturing or callable within ten and one-half years (10.5) of their date of issuance.
- a. Types of Remedial Action. Subject to the condition precedent that the Lessees obtain an opinion of Bond Counsel prior to the taking of any of the below actions to the extent that taking any of the below actions will not result in interest on the Bonds becoming included in gross income for federal income tax purposes, the following types of Remedial Actions may be available to remediate a Deliberate Action subsequent to the issuance of the Bonds:
 - 1) Redemption or Defeasance of Bonds.

- a) If the Deliberate Action taken by the Lessees causing either the Private Business Use Test or the Private Loan Financing Test to be satisfied consists of a fair market value disposition of any portion of the Projects exclusively for cash, then the Lessees may allocate the Disposition Proceeds to the redemption of Nonqualified Bonds pro rata across all of the then-outstanding maturities of the Bonds at the earliest call date of such maturities of the Bonds after the taking of the Deliberate Action or, if any of the maturities of the Bonds outstanding at the time of the taking of the Deliberate Action are not callable within 90 days of the date of the Deliberate Action, allocate the Disposition Proceeds to the establishment of a Defeasance Escrow for any such maturities of the Bonds within 90 days of the taking of such Deliberate Action.
 - b) If the Deliberate Action taken by the Lessees consist of a fair market value disposition of any portion of the Projects for other than exclusively cash, then the Lessees may use any funds (other than Proceeds of the bonds or proceeds of any obligation the interest on which is excludable from the gross income of the holders thereof for purposes of federal income taxation) for the redemption of all Nonqualified Bonds within 90 days of the date that the Lessees take such Deliberate Action or, in the event that insufficient maturities of the Bonds are callable by the date which is within 90 days after the date of the Deliberate Action, then the Lessees may use such funds for the establishment of a Defeasance Escrow within 90 days of the date of the Deliberate Action for all of the maturities of the Nonqualified Bonds not callable within 90 days of the date of the Deliberate Action.
 - c) If the Issuer, at the request of the Lessees, creates a Defeasance Escrow for any maturities of Nonqualified Bonds which are not callable within 90 days of the date of the Deliberate Action, the Issuer, at the request of the Lessees, shall provide written notice to the Commissioner of Internal Revenue Service at the times and places as may be specified by applicable regulations, rulings or other guidance issued by the Department of the Treasury or the Internal Revenue Service.
- 2) Alternative Use of Disposition Proceeds. Use by the Lessees of any Disposition Proceeds in accordance with the following requirements may be treated as a Remedial Action with respect to the Bonds if taken in conjunction with the opinion of Bond Counsel:

- a) The Deliberate Action consists of a disposition of all or any portion of the Projects for not less than the fair market value thereof for cash,
 - b) The Lessees reasonably expect to expend the Disposition Proceeds resulting from the Deliberate Action within two years of the date of the Deliberate Action,
 - c) The Disposition Proceeds are treated by the Lessees as Proceeds of the Bonds for purposes of Section 141 of the Code and the Regulations thereunder, and the use of the Disposition Proceeds in the manner in which such Disposition Proceeds are in fact so used by the Lessees would not cause the Disposition Proceeds to satisfy the Private Activity Bond Tests,
 - d) The Lessees do not take action after the date of the Deliberate Action to cause the Private Activity Bond Tests to be satisfied with respect to the Bonds, the Projects or the Disposition Proceeds (other than any such use that may be permitted in accordance with the Regulations),
 - e) Disposition Proceeds used in a manner that satisfies the Private Activity Bond Tests or which are not expended within two years of the date of the Deliberate Action must be used to redeem or defease Nonqualified Bonds in accordance with the requirements set forth in Section 2.a. hereof, and
 - f) In the event that Disposition Proceeds are to be used by any organization described in Section 501(c) (3) of the Code, the Lessees will consult with Bond Counsel as to any additional requirements which may be applicable.
- 3) Alternative Use of Projects Financed or Refinanced by the Bonds.
If the Lessees have obtained the opinion of Bond Counsel and, subsequent to the Lessees taking any Deliberate Action with respect to all or any portion of the Projects:
- a) The portion of the Projects subject to the Deliberate Action is used for a purpose that would be permitted for qualified tax-exempt bonds,
 - b) The disposition of the portion of the Projects subject to the Deliberate Action is not financed by a person acquiring the Projects with proceeds of any obligation the interest on which is exempt from the gross income of the holders thereof under

Section 103 of the Code for purposes of federal income taxation,

- c) Any Disposition Proceeds other than those arising from an agreement to provide services (including Disposition Proceeds arising from an installment sale) resulting from the Deliberate Action are used to pay the debt service on the Bonds on the next available payment date or, within 90 days of receipt thereof, are deposited into an escrow that is restricted as to the investment thereof to the Bond Yield to pay debt service on the Bonds on the next available payment date; then the Lessees may be considered to have taken sufficient Remedial Actions under Section 1.141-12 of the Regulations to cause the Bonds to continue to be treated as qualified tax-exempt bonds,
- d) Absent an opinion of Bond Counsel, no Remedial Actions shall be available to remediate the satisfaction of the *private security or payment test* of Section 141(b) of the Code and the Regulations thereunder regarding the same with respect to the Bonds,
- e) Nothing herein shall prohibit the Lessees from taking any Remedial Actions not described herein that may become available subsequent to the date of issue of the Bonds to remediate the effect of a Deliberate Action taken with respect to the Bonds, the proceeds thereof, or the Projects.

D. Additional Defined Terms:

1. For purposes of this Appendix, the following terms shall have the following meanings:
 - a. Commissioner means the Commissioner of Internal Revenue, including any successor person or body.
 - b. Defeasance Escrow means an irrevocable escrow established to redeem obligations on their earliest call date in an amount that, together with investment earnings thereon, is sufficient to pay the entire principal of, and interest and call premium on, obligations from the date the escrow is established to the earliest call date. A Defeasance Escrow may not be invested in higher yielding investments or in any investment under which the obligor is a user of the Proceeds of the obligations.
 - c. Deliberate Action means any action, occurrence or omission by the Lessees that is within the control of the Lessees which causes either (1) The Private Business Use Test of Section 141(b) of the Code to be satisfied with respect to

the Bonds, the Projects (without regard to the private security or payment test of Section 141(b) of the Code), or (2) the private loan financing test of Section 141(c) of the Code to be satisfied with respect to the Bonds or the proceeds thereof. An action, occurrence or omission is not a Deliberate Action if (1) the action, occurrence or omission would be treated as an involuntary or compulsory conversion under Section 1033 of the Code, or (2) the action, occurrence or omission is in response to a regulatory directive made by the government of the United States.

- d. Disposition Proceeds means any amounts (including property, such as an agreement to provide services) derived from the sale, exchange or other disposition of property (other than Investments) financed with the proceeds of the Bonds.
- e. Non-qualified Bonds means that portion of the Bonds outstanding at the time of a Deliberate Action in an amount that, if the outstanding Bonds were issued on the date on which the Deliberate Action occurs, the outstanding Bonds would not satisfy the Private Business Use Test or the Private Loan Financing Test, as applicable. For this purpose, the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the Deliberate Action.
- f. Private Activity Bond Tests means, collectively, the Private Business Use Test, the private security or payment test of Section 141(b)(2) of the Code and the Regulations thereunder, and the Private Loan Financing Test.
- g. Private Business Use Test has the meaning set forth in Section 141(b)(1) of the Code.
- h. Private Loan Financing Test has the meaning set forth in Section 141(c) of the Code.
- i. Remedial Action means any of the applicable actions described in Section 2. hereof, or such other actions as may be prescribed from time to time by the Department of the Treasury or the Internal Revenue Service, which generally have the effect of rectifying noncompliance by the Lessees with certain provisions of Section 141 of the Code and the Regulations thereunder and are undertaken by the Lessees to maintain the federal tax status of the Bonds as qualified tax-exempt bonds.

XII. POST-ISSUANCE TAX COMPLIANCE PROCEDURES

A. General

1. Bernalillo County, New Mexico (the “County”), expects to act exclusively as a conduit issuer of revenue bonds for the benefit of conduit borrowers (each, a

“Borrower”). Therefore, pursuant to the tax certificate and/or agreement (each, a “Tax Certificate”) relating to an issue of revenue bonds, the interest on which is intended to be excludable from the gross income of the owners thereof for federal income tax purposes (the “Tax-Exempt Bonds”), the Borrower will bear primary responsibility for all ongoing tax compliance matters relating to the Tax-Exempt Bonds.

2. The County further expects to use a trustee (the “Trustee”) with respect to the Tax-Exempt Bonds that will be assigned certain document retention requirements in compliance with the County’s document retention policy. The County retains the right to require that both the Borrower and the Trustee produce for inspection any and all documentation regarding the Tax-Exempt Bonds.

B. Designation of Responsible Person(s)

The County hereby designates its County Manager with responsibility to oversee compliance herewith; provided that each Borrower shall retain responsibility for such written procedures described below. The Borrower shall designate an officer thereof in the Tax Certificate as its compliance officer with responsibility to oversee compliance with the written procedures described below, and shall inform the County of such designation and contact information for such person(s). The Borrower also shall provide timely notice to the County of changes in such personnel from time to time.

C. Post-Issuance Compliance Requirements

1. External Advisors/Documentation

- a. The County and the Borrower shall consult with Bond Counsel and other legal counsel and advisors, as needed, throughout the Tax-Exempt Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Tax-Exempt Bonds will continue to qualify for tax-exempt status. Those requirements and procedures shall be documented in the Tax Certificate and/or other documents finalized at or before issuance of the Tax-Exempt Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements by both the Borrower and the Trustee and all other applicable post-issuance requirements of federal tax law throughout the term of the Tax-Exempt Bonds, as well as beyond such term, in appropriate cases.
- b. The Borrower also shall consult with Bond Counsel and other legal counsel and advisors, as needed, following issuance of the Tax-Exempt Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with the use of proceeds, as well as future contracts with respect to the use of assets financed or refinanced with the proceeds of the Tax-Exempt Bonds.

- c. The County shall require the Borrower to engage expert advisors (each, a “Rebate Analyst”) to assist in the calculation of arbitrage rebate payable in respect of the investment of proceeds of the Tax-Exempt Bonds, unless the Tax Certificate provides that arbitrage rebate will not be applicable to an issue of Tax-Exempt Bonds.
- d. Unless otherwise provided by the indenture or other authorizing documents relating to the Tax-Exempt Bonds, unexpended proceeds of the Tax-Exempt Bonds shall be held by the Trustee, and the investment of proceeds of the Tax-Exempt Bonds shall be managed by the Borrower. The Borrower shall prepare (or cause the Trustee to prepare) regular, periodic statements regarding the investments and transactions involving proceeds of the Tax-Exempt Bonds and such statements shall be delivered to the County if it so requests.

2. Arbitrage Rebate and Yield

- a. Unless the Tax Certificate provides that arbitrage rebate will not be applicable to an issue of Tax-Exempt Bonds, it is the County’s policy that the Borrower shall be responsible for:
 - 1) Engaging the services of a Rebate Analyst and, prior to each rebate calculation date, causing the Trustee or other account holder to deliver periodic statements concerning the investment of proceeds of the Tax-Exempt Bonds to the Rebate Analyst,
 - 2) Providing to the Rebate Analyst additional documents and information reasonably requested by the Rebate Analyst,
 - 3) Monitoring efforts of the Rebate Analyst,
 - 4) Assuring payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Tax-Exempt Bonds, and no later than 60 days after the last bond of the issue of Tax-Exempt Bonds is redeemed,
 - 5) During the construction period of each capital project financed in whole or in part by the Tax-Exempt Bonds, monitoring the investment and expenditure of proceeds of the Tax-Exempt Bonds and consulting with the Rebate Analyst to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the Tax-Exempt Bonds, and

- 6) Retaining copies of all arbitrage reports and account statements as described below under “Record Keeping Requirements” and, upon request, providing such copies to the County.
 - b. The Borrower, in the Tax Certificate relating to the Tax-Exempt Bonds and/or other documents finalized at or before the issuance of the Tax-Exempt Bonds, shall agree to undertake the tasks listed above (unless the Tax Certificate provides that arbitrage rebate will not be applicable to an issue of Tax-Exempt Bonds).
3. Use of Bond Proceeds and Bond-Financed or Refinanced Assets:
- a. It is the County’s policy that the Borrower shall be responsible for:
 - 1) Monitoring the use of proceeds of the Tax-Exempt Bonds and the use of assets (e.g., facilities, furnishings or equipment) financed or refinanced with proceeds of the Tax-Exempt Bonds throughout the term of the Tax-Exempt Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Tax-Exempt Bonds,
 - 2) Maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of the Tax-Exempt Bonds, including a final allocation of proceeds of the Tax-Exempt Bonds as described below under “Record Keeping Requirements,”
 - 3) Consulting with Bond Counsel and other legal counsel and advisers in the review of any contracts or arrangements involving use of assets financed or refinanced with proceeds of the Tax-Exempt Bonds to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Tax-Exempt Bonds,
 - 4) Maintaining records for any contracts or arrangements involving the use of assets financed or refinanced with proceeds of the Tax-Exempt Bonds as described below under “Record Keeping Requirements,”
 - 5) Providing any relevant records described below under “Record Keeping Requirements” required by the Internal Revenue Service, Securities and Exchange Commission or other federal agency to verify compliance with federal law, rules or regulations,
 - 6) Conferring at least annually with personnel responsible for assets financed or refinanced with proceeds of the Tax-Exempt Bonds to identify and discussing any existing or planned use of assets financed or refinanced with proceeds of the Tax-Exempt Bonds, to ensure that

those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Tax-Exempt Bonds, and

- 7) To the extent that the Borrower discovers that any applicable tax restrictions regarding use of proceeds of the Tax-Exempt Bonds or assets financed or refinanced with proceeds of the Tax-Exempt Bonds will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary.
 - b. The Borrower, in the Tax Certificate relating to the Tax-Exempt Bonds and/or other documents finalized at or before the issuance of the Tax-Exempt Bonds, shall agree to undertake the tasks listed above.
4. All relevant records and contracts shall be maintained as described in the below Record Keeping Requirements:
- a. It is the County's policy that the Borrower shall be responsible for maintaining the following documents for the term of each issue of Tax-Exempt Bonds (including refunding Tax-Exempt Bonds, if any) plus at least six years:
 - 1) A copy of the closing transcript(s) relating to the Tax-Exempt Bonds and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of the Tax-Exempt Bonds, including any elections made by the County or the Borrower in connection therewith,
 - 2) A copy of all material documents relating to capital expenditures financed or refinanced by proceeds of the Tax-Exempt Bonds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, draw requests for proceeds of the Tax-Exempt Bonds and evidence as to the amount and date for each draw down of proceeds of the Tax-Exempt Bonds, as well as documents relating to costs paid or reimbursed with proceeds of the Tax-Exempt Bonds and records identifying the assets or portion of assets that are financed or refinanced with proceeds of the Tax-Exempt Bonds, including a final allocation of proceeds of the Tax-Exempt Bonds,
 - 3) A copy of all contracts and arrangements involving the use of assets financed or refinanced with proceeds of the Tax-Exempt Bonds, and
 - 4) A copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in

connection with any investment agreements, and copies of all bidding documents, if any.

- b. For tax-exempt bond financings of qualified residential projects subject to the requirements of Section 142(d) of the Internal Revenue Code of 1986, as amended (the “Code”), it is the County’s policy that the Borrower shall be responsible for maintaining the following additional documents until the end of the “qualified project period” within the meaning of Section 142(d)(2)(A) of the Code, plus at least three years:

A copy of all records evidencing compliance with the requirements of Section 142(d) of the Code including income verifications, leases, and rental records.

- c. The Borrower, in the Tax Certificate relating to the Tax-Exempt Bonds and/or other documents finalized at or before the issuance of the Tax-Exempt Bonds, shall agree to the foregoing records retention requirements and procedures.

XIII. INDUSTRIAL REVENUE BOND (IRB) PROJECT PLAN

By determination of the County Manager/Economic Development Director under Sec. 2-298 of the Bernalillo County Code, the written responses to the following inquiries will constitute the Project Plan required by Bernalillo County Code Section 2-293:

A. GENERAL DESCRIPTION AND LOCATION

Provide a description of the project, including general location, proposed development, use, and total bond amount requested; i.e., a thumbnail sketch of the proposed project. Include a statement of the benefit to be gained by the Bernalillo County community from this development. The benefits of this project plan will be judged according to the Bond Project Criteria; while staff may prepare these responses, the applicant is strongly encouraged to address them in writing as part of the Project Plan submittal.

B. NUMBER AND TYPE OF JOBS CREATED

Identify the number and type (i.e., professional, clerical, assembly line, etc.) of permanent jobs which will be created in the project. Do not include existing jobs being relocated to the new site.

1. Permanent Jobs:

- a. All conduit financing projects must result in the creation of new jobs, full-time (minimum of 32 hours/week), and year round. To attract the best

candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the State of New Mexico High Wage Job Tax Credit,

- b. Candidates must be of legal status for employment, and
- c. Candidates shall not have terminated a public school program except by graduation or GED certification within the three months prior to beginning employment.

2. Monitoring:

Conduit financing projects shall submit annual job creation reports to the Bernalillo County Economic Development Department for the life of the project. Reports shall include the following information:

- a. Number of newly-created jobs,
- b. Provide quarterly records of unemployment insurance payment for newly-created jobs,
- c. Economic Development staff will complete site interviews with candidates that have filled newly-created jobs.

C. CLAW BACK PROVISION

- 1. Bond documents for projects seeking GRT or property tax abatements submitted to the County for approval will include a performance agreement. This agreement will include all requirements and representations regarding the jobs, wages and other economic development impacts of the project being financed. Failure to meet any of the requirements or representations under which bonds were issued may be considered a technical default and result in a re-payment of tax abatement incentives by the Borrower to the County unless it is determined by the County that failure was due to circumstances beyond the control of the business. The County will include this performance agreement, also known as claw backs in the Bond Purchase Agreement or other appropriate document.
- 2. Facility Closure Claw Backs: In the event that a facility financed with conduit bonds issued by the County ceases operation within 10 years of bond issuance, claw backs provide for a pro-rata repayment of the abated property, GRT and compensating taxes, depending upon the amount of time elapsed from date of issuance to date of closure of the project. Claw Back provisions may be adjusted to account for the unique circumstances of a particular issue. Staff will determine whether unique circumstances exist with respect to claw backs and will make such recommendations when the project is recommended for approval.

3. Performance Claw Backs:

- a. If employment numbers, sales volumes, or other economic benefits projected in the Performance Agreement are not achieved (for example, an applicant had forecast 100 jobs, but only achieved 80) a claw back, in the form of a Payment in Lieu of Taxes, shall be implemented. The contingent payment in lieu of taxes provisions will be outlined in the Performance Agreement. Performance will be measured annually and compared to projections and provisions of the Bond Purchase Agreement by the County, Department or a third-party independent contractor.
- b. If the reviewer determines there is a substantial shortfall of actual versus projected performance, then the Department shall exercise a claw back of the taxes abated. In the event the recipient subsequently cures that shortfall, then abatement shall be restored on a ratable basis.
- c. The County acknowledges that the purpose of this condition is not to penalize the Borrower for business conditions or events that are outside the control of the company.
- d. Failure to comply with the above referenced Performance Agreement, a claw back provision allows the BCC to modify or eliminate the tax exemption if they find the business is not in compliance with the provision of this policy is in effect. The tax exemption may be modified or eliminated as the BCC deems appropriate. The County Assessor and Board of Tax Appeals shall be notified of such action and the claw backs in the form of a decreased abatement as indicated in the schedule below will be enforced. This claw back may be reversed again when goals are met to the approval of the BCC.
- e. Applicants will be assessed five years (5) of property taxes if they cease operation or default before one-half (1/2) of the bond amortization period.

D. INFORMATION CONCERNING PRODUCTS AND PROCESSES

Identify the products and/or process involved with this project. Specifically address the question of whether the proposed development will generate air, noise or waste pollution or traffic congestion.

E. RELOCATION OF INDIVIDUALS OR BUSINESSES

It is not desired that any individuals, families or businesses will be displaced by the activities outlined in this plan. If any relocation is required, detail the assistance the applicant will give in relocation.

F. EXISTING CONDITIONS

1. Present Use and Conditions: Describe the present use and development of the site, including any improvements, vacant land, etc.
2. Current and Proposed Zoning: Identify the current zoning of the property. If any change in zoning is required for the proposed use, specify the proposed new zone. The zoning changes required must be requested before the project plan reaches the BCC, and obtained before a bond ordinance can be adopted.
3. Present Assessed Value: State the present assessed value according to the Bernalillo County Assessor's office. A current appraised value can be listed if it will make the post-development value clearer.
4. Legal Description: Provide both the precise and complete legal description and address or identification of location.

G. ESTIMATED VALUE AFTER COMPLETION

State the estimated appraisal value of the project site after completion of the project.

H. MAXIMUM AMOUNT OF CONDUIT BONDS TO BE ISSUED

State the maximum amount of conduit bonds to be issued.

I. CONSTRUCTION SCHEDULE

Provide the dates of anticipated beginning and completion of construction of the building, the anticipated period for equipment installation and the probable date of commencement of operations.

J. FEASIBILITY OF THE PROPOSED PROJECT

Provide documentation of the feasibility of the proposed project including information establishing the ability of the project to generate revenues to render the project self-liquidating.

K. COMPETITION

Identify the effect the project will have on competition in the type of commerce or industry already existing within the County and its environs. Since the Bernalillo County Commission does not normally wish to make bond financing available for projects with conventionally financed local competition, this statement is very important.

L. EFFECT ON EXISTING INDUSTRY AND COMMERCE DURING AND AFTER CONSTRUCTION

Describe the predicted effects on the County, including benefits (construction jobs generated, increased employment, increased sales, new industrial base, possible spin-off business, etc.)

M. PRIVATE INVESTMENT

Describe the amount and form of private investment in the project in addition to conduit bond financing.

N. VALUE OF PROPOSED IMPROVEMENTS

State the total dollar value of the proposed improvements included as part of the project.

O. MANAGEMENT

Describe the plans for project management and identify the project manager. If the project will be managed by someone other than the developer, state whether the applicant has a long range investment in the project.

P. RESUMES

Provide resumes showing the experience of the development entity or principals, and the experience of the architect, contractor, and leasing agent, if relevant.

Q. CONCEPTUAL SITE PLANS

Attach a conceptual site plan and building elevations. Describe the construction to be undertaken in the project, including gross and net square footage construction type, and location of construction on the project site. Indicate whether existing buildings on the site will be rehabilitated or incorporated in the construction. Detail any demolition that will be required by the project, and indicate whether demolition involves any identified historic properties. Note any public infrastructures that may be required.

R. MAP OF PROJECT AREA

Attach a vicinity map from the County Zone Atlas locating the project to the plan.

S. OTHER MATTERS

This section is reserved for other matters, as the County Manager/Economic Development Director may deem relevant to the project or for additional information requested by the County. Also, Bernalillo County is interested in corporations that are valuable corporate citizens with an interest in people and community. Describe the various methods that the company has identified as to how it plans to reinvest in the community.

T. INDUSTRIAL REVENUE BONDS

Property taxes will be waived on property or equipment built or acquired with proceeds of Industrial Revenue Bonds for the bond amortization period.

XIV. INDUSTRIAL REVENUE BOND (IRB), INDUSTRIAL DEVELOPMENT PROJECT (IDP), PROJECT REVENUE BOND (PRB), AND LOCAL ECONOMIC DEVELOPMENT ACT (LED A) PROCEDURES

A. GENERAL PROCEDURE INFORMATION

1. The County of Bernalillo has developed the following guide to assist the applicant with the IRB/IDP/PRB/LED A process and Bernalillo County regulations. However, if the applicant has questions or needs more detail about the process they should contact the Bernalillo County Economic Development Department.
2. Bernalillo County is also granted authority to administer grants to Local Organizations that stimulate economic development and/or comply with the Local Economic Development Act (LED A).
3. Included in Appendix E of this document is a copy of the State of New Mexico LED A Act. Please refer to these should you have questions about the legal basis of the LED A process. The staff of the Bernalillo County Economic Development Department is available to meet with the applicant at any point.
4. Funding of grants is strictly based on the approval from the Bernalillo County Commission. All LED A grants are funded strictly on a reimbursable basis.
5. County targets economic development projects (projects) that comply with all legal facets of LED A and/or meet the following goals:
 - a. Wealth Creation and Capital Investment,

- b. Increased Wages and Job Creation,
- c. Underserved Areas of Bernalillo County,
- d. Community Impact and Support, and
- e. Environmentally Sustainable Outcomes.

B. IRB/IDP/PRB/LEDA APPLICATION

1. The applicant shall submit to the Bernalillo County Manager/Economic Development Director a completed original of the County of Bernalillo IRB/IDP/PRB/LEDA application and a one-page summary/description of the project. The fees need not be paid at the time of application.
2. The bond issuance process for a IRB/IDP/PRB commences when an applicant files a completed application with the Bernalillo County Economic Development Department; the County will provide an application form to any prospect as requested. Each completed application will be reviewed and evaluated within twenty (20) days of receipt.
3. Priority in awarding financial assistance for LEDA applications will be given to a qualified entity that is located or is willing to locate in the underserved area of Bernalillo County and increases economic development impact in the following manner:
 - a. Increases Wealth of the Community,
 - b. Increases Health and/or Safety of the Community, and
 - c. Increases the Diversity of the Local Economy.

C. IRB/IDP/PRB/LEDA QUALIFICATIONS

1. Bernalillo County will only use an IRB/IDP/PRB/LEDA for projects that meet both Economic Development and qualified entity specifications. Qualified project and entity definitions are below:
 - a. Economic Development project or Project means a qualifying entity essential to the location or expansion of a qualifying entity for use by a qualifying entity,

- b. Qualifying Entity, as defined in Sec. 5-10-3 NMSA 1978 means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two or more of the following:
 - 1) An industry for the manufacturing, processing or assembling of agricultural or manufactured products,
 - 2) A commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than an Indian nation, tribe or pueblo or a federally chartered tribal corporation or a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico,
 - 3) A business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico and a retail business.
 - c. Bernalillo County will only use a PRB as follows (Section 4-62-1.G. NMSA 1978): Project revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any revenue-producing project, including as applicable purchasing, otherwise acquiring or improving the ground therefor and including but not limited to acquiring and improving parking lots, or may be issued for any combination of the foregoing purposes. The County may pledge irrevocably any or all of the net revenues from the operation of the revenue-producing project for which the particular project revenue bonds are issued to the payment of the interest on and principal of the project revenue bonds. The net revenues of any revenue-producing project shall not be pledged to the project revenue bonds issued for any other revenue-producing project that is clearly unrelated in nature; but nothing in this subsection prevents the pledge to any of the project revenue bonds of the revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular revenue-producing project. A general determination by the governing body that facilities or equipment is reasonably related to and constitutes a part of a specified revenue-producing project shall be conclusive if set forth in the proceedings authorizing the project revenue bonds.
2. An applicant's readiness to proceed will be a priority in evaluating any application to determine its overall impact.

3. Qualified entities that derive most of their revenues from outside the State of NM will be considered a priority.
4. Qualified entities with new capital investment will be prioritized.
5. Community impact and support: a project's ability to improve the quality of life for the areas in close and direct proximity to the project will receive priority. Projects that result in job retention and that will combat economic decline within their respective communities will be given priority.
 - a. Qualified entities will be required to submit evidence of strong community benefit and support.
 - b. Along with a description of the benefits, an applicant will provide targeted industry information, expected environmental impact, if any, inclusion in a downtown redevelopment, and installation of public facilities or infrastructure.

D. APPLICATION DISCUSSION

The applicant is required to meet with the Economic Development Director. The purpose of this meeting is to discuss the project and determine if the proposal is a likely candidate for the Bernalillo County IRB/IDP/PRB/LEDAs process. If the project meets Bernalillo County criteria for issuance of Industrial Revenue Bonds or LEDA assistance, the Economic Development Director will establish a schedule for an Inducement Resolution and Bond Ordinance approval.

E. BERNALILLO COUNTY CONDUIT DEBT REVIEW FORM

Economic Development Staff will prepare a Conduit Financing or LEDA Review Form (the Form) for Management's review. Please refer to the Conduit Financing Review Form as Exhibit; LEDA Review Form as Exhibit F. The Form is intended to aid in verifying a project's compliance with the County's conduit financing policy, debt policies, and if applicable the Local Economic Development Act. The Debt Advisory Committee shall review projects that do not meet compliance criteria. The Debt Advisory Committee review will be documented along with the conduit financing within the Agenda item presented to the Commissioners. The Form shall be incorporated into the project's legislative file.

F. ECONOMIC DEVELOPMENT REVIEW COMMITTEE MEETING

The applicant is required to meet with Economic Development Review Committee. The committee consists of Finance, Public Works, Zoning, and Fire. The committee will review the specific project and advise the applicant of potential issues, concerns or problems with the project and/or application. The purpose of the committee meeting is to assist the applicant, answer any questions, to familiarize County Representatives with the project and to avoid unnecessary problems or delays in the IRB/IDP/PRB/LEDA process. Additionally, the committee may suggest potential plan revisions, additional County permits, or meetings with neighborhood groups, possible competitors, and other County agencies. The County Manager or Economic Development Director may waive this meeting.

G. SUBMITTAL

1. Once the applicant has made the formal IRB/IDP/PRB/LEDA application, completed the Application Discussion and met with the Economic Development Review Committee, the applicant and/or agent must submit the following to the Bernalillo County Manager/Economic Development Director:
 - a. A Project Plan (7 copies)
 - b. A Response to the Fiscal Impact Analysis Questionnaire, and
 - c. All Applicable fees; see pages 35–36.
2. Upon receipt of the required submittals, the County Manager/Economic Development Director shall review all bond projects to determine if the project plan submittals are complete, and may require in writing other information deemed relevant.
3. The County Manager/Economic Development Director may reject an incomplete proposal. The applicant may submit to the Bernalillo County Manager/Economic Development Director additional materials to include in the project packet up to 10 days before the BCC hearing at which the project plan will be introduced. If the County of Bernalillo requests further information, it must be supplied to the Economic Development Director 10 days before the BCC hearing.
4. Please refer to the Flow Chart (EXHIBIT B) and the Agenda Item Deadline Schedule (EXHIBIT C).
5. Within 15 days of receiving the project plan, the County Manager/Economic Development Director will contract with an independent consultant to prepare an economic and fiscal analysis of the proposed project. The answers to the Fiscal

Impact Analysis Questionnaire are a major factor in assessing the validity of the project. The independent analysis evaluates the benefits of the proposed project according to the Project Criteria. At the same time, the Bernalillo County Attorney/Bond Counsel will provide a legal review.

6. Upon receipt of the analysis and legal review, the County Manager/Economic Development Director will submit the project plan to the Bernalillo County Commission for discussion only, not final action, at the next regularly scheduled meeting. For conduit financing, the County Manager/Economic Development Director will also submit a recommendation to approve, conditionally approve, or reject the proposed plan and a Notice of Intent to adopt a Revenue Bond Ordinance.

H. LEDA PROJECT PARTICIPATION AGREEMENT; DUTIES AND REQUIREMENTS

1. Bernalillo County and the qualifying entity shall enter into a project participation agreement.
2. Bernalillo County shall require a substantive contribution from the qualifying entity for each economic development project. Public support provided for an economic development project shall be in exchange for a substantive contribution from the qualifying entity. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.
3. The qualifying entity shall provide security to Bernalillo County for providing public support for an economic development project. The security shall secure the qualifying entity's obligations based on terms stated in the project participation agreement with the Bernalillo County and shall reflect the amount of public support provided to the qualifying entity and the substantive contribution expected from the qualifying entity.
4. If a qualifying entity fails to perform its substantive contribution, Bernalillo County shall enforce the project participation agreement to recover that portion of the public support for which the qualifying entity failed to provide a substantive contribution. The recovery shall be proportional to the failed performance of the substantive contribution and shall take into account all previous substantive contributions for the economic development project performed by the qualifying entity, based on the terms stated in the project participation agreement.
5. The project participation agreement shall set out, at a minimum:
 - a. The contributions to be made by Bernalillo County and the qualified entity to the participation agreement,

- b. The security provided to Bernalillo County that provides public support for an economic development project by the qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement,
- c. A schedule for project development and completion, including measurable goals and time limits for those goals, and
- d. Provisions for performance review and actions to be taken upon a determination that project performance are unsatisfactory.

I. PUBLIC INPUT PERIOD

At this point in the process, Bernalillo County Code requires a 30-day minimum public input period prior to any subsequent meeting of the Bernalillo County Commission to consider a proposed ordinance. Any person wishing to comment on the plan and/or the recommendation may do so by submitting written comments to the Bernalillo County Commission with a copy to the County Manager/Economic Development Director. The comments may be either support or oppose the project. This must occur at least eight days before the meeting, in which the board is scheduled to take final action on the proposed plan.

J. CHANGES TO PLAN

Once submitted, minor changes in the Project Plan can be made by letter specifically stating the changes and by reference, incorporate them into the plan. (If the bond or assistance amount is increased, a check for any additional fees with the letter noting the change must be included.) Major changes may require submission of an amended plan no later than 10 days before the BCC hearing. The staff may recommend deferral or even resubmittal, if the amended plan is substantially different from the one described in the legal ad and required notices.

K. BOARD OF COMMISSIONERS (BCC) HEARING

1. The first Bernalillo County Commission hearing involves the Inducement Resolution (the County's statement of intent to issue the bonds), or Notice of Intent (for LEDA applications). The applicant will present the argument to the Bernalillo County Commission for adoption of the resolution. The applicant and/or a representative of the developer are required to attend the hearing.
2. Depending on the nature of the project, the applicant may wish to have the project's architect, fiscal officer, lawyer, or leasing agent at the meeting. A large-scale version of the conceptual site plan is helpful to the Bernalillo County Commission. The County Manager, Economic Development Director, County Attorney, and County

Bond Attorney attend all Commission bond hearings, and advise the Commission on legal and technical questions. At the meeting, staff briefly summarizes the project and provides analysis. The applicant presents the project and answers Commissioners questions. Others in attendance may speak for or against the project. The County Manager/Economic Development Director will make a final recommendation to the board.

L. CERTIFICATION OF ZONING

Prior to passage of the Bond Ordinance, the applicant must receive a Certification of Zoning from the Department of Planning and Development Services. If the property is zoned for the proposed use, this should be quickly obtained. If zoning actions are required, the zoning representative on the Economic Development Review Committee will answer any questions and address the zoning of the proposed site during the review meeting. Other members of the committee also may be called upon to answer Commissioners questions.

M. BOND/PROJECT ORDINANCE

Following passage of the Inducement Resolution and the public input period, the Bernalillo County Commission may consider passing a Bond/Project Ordinance. Once passed, it should be possible for the County of Bernalillo to issue and sell the bonds. For LEDA projects, following passage of the Notice of Intent Resolution and the public input period, the Bernalillo County Commission may consider passing a Project Ordinance.

N. FEES AND DEPOSIT

1. At which time determined by the County, an applicant must pay any application fees. The County's current fee schedule, which is subject to change by the County at its sole discretion, can be obtained by contacting the County. The County's closing fee and its Issuer's Counsel Fee are payable at the bond closing. In the event that a project approved by the County does not close, the applicant will not have to pay the County's closing fee; however, applicant shall be liable for and shall pay any and all costs associated with the County's retention of outside professionals, including but not limited to Issuer's Counsel, in connection with the project.
2. Since Bernalillo County is authorized to conduct transactions where the County has no funds at risk, the primary focus of rules and policies concentrate on mitigating the risk of default, which could have a negative impact on Bernalillo County's name in the marketplace. Straight conduit bond issuances are not subject to staff or third party credit analysis. All other conduit financing issuances will be subject to staff and third party credit analysis to ensure that the project and applicant is financially sound; a practice that will assist Bernalillo County in maintaining a viable business community. The application materials will require applicants to submit and Economic

Disclosure Statement to ensure that all direct or perceived conflicts of interest are noted. Additionally, the policies limit the method and distribution of bonds based upon the credit worthiness of the underlying project.

3. The fee schedule proposed by staff attempts to compensate for staff time incurred in the underwriting, approval, issuance and monitoring stages of the financing. Additionally, if the requested bonds require Private Activity Bond (“PAB”) Volume Cap, the fees charged by the State Board of Finance will also be charged and passed through to the State Board of Finance on behalf of the benefitting project. The fees are consistent with other conduit issuers both in New Mexico and in other states.

O. THE APPLICANT SHALL PAY THE COUNTY OF BERNALILLO:

1. Application Fee. A fee of one-tenth of one percent of the face amount of the bonds. The fee shall not be less than \$2,500. Fee will be used to pay for third party project analysis; and,
2. A deposit of \$5,000 to be applied against the independent financial analysis costs. If the cost of the analysis exceeds the deposit, the applicant shall pay the additional costs.
3. Legal Fee Deposit: \$2,500 (non-refundable). The Legal Fee Deposit will be deducted from the Origination Fee at closing.
4. Annual Maintenance Fee: 10 basis points on the principal amount outstanding.
5. Other Fees. All financial advisory fees and legal fees, including the borrower's legal counsel fees, bond counsel fees, special tax counsel fees (if required), and the issuer's counsel fees, are the responsibility of the borrower. Other financing expenses, such as title policies, are the responsibility of the borrower.
6. Private Activity Bond Volume Cap Fees (as currently charged by State Board of Finance):
 - a. PAB Volume Cap Application Fee: \$ 750 for transactions up to \$15 million or less,
 - b. \$1,500 for transactions greater than \$15 million and less than \$30 million,
 - c. \$3,000 for allocation requests greater than \$30 million,
 - d. PAB Volume Cap Allocation Fee: \$ 250 per million requested (refundable upon issuance),
 - e. PAB Volume Cap Extension Fee: \$ 750 (if approved).

P. MEETINGS, SCHEDULES AND FORMS

1. All forms are available at the Bernalillo County Director Economic Development Department located in the Bernalillo County Annex Building, 2nd Floor. The building is located downtown at 415 Tijeras NW, on the corner of 5th and Tijeras. If you need to schedule a meeting or need specific information, you can call 505-768-7185. Scheduling of the inducement action occurs at the meeting with the Economic Development Director.
2. Applications will be evaluated using a rolling application process that will be standardized and transparent. The applicant will be required to provide adequate information at each review stage to enable County staff and the County Commission to make responsible decisions about the merits of the County's investment.

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EXHIBIT A

Bernalillo County Conduit Debt Review Form				
<p>Project _____ has been reviewed by both the Economic Development Department and Finance Special Projects. The project complies with the following criteria from Bernalillo County's Conduit Financing Policy. Projects that do not meet the qualifications below shall be presented to Debt Policy Committee for review.</p>				
Compliance Criteria			Compliance	
			Yes	No
1	Does project meet economic development project qualifications?			
2	Does project meet qualified entity test?			
3	Did project pay application fee and legal deposit?			
4	Does project result in new job creation?			
5	Does project identify bond purchasers?			
6	Does project conflict with County Debt Policy or Conduit Financing Policy?			
7	Does this project create additional compliance reporting, project management, or extraordinary activity for any County department?			
8	Does project utilize qualified form of collateral?			
9	Does the project have any State or Federal tax liens?			
10	Does the project meet the property tax abatement limitation of 1% of total annual County levy abatements?			
11	Does the project meet the \$30,000 property tax abatement limitation of the County portion?			
Department Comments			Comment	
10	Comment from Economic Development			
11	Comment from Budget and Business Improvement			
12	Comment from Finance			
Approved: Economic Development Director				
Approved: Finance Special Projects				

EXHIBIT B

Economic Development Assistance Flow Chart

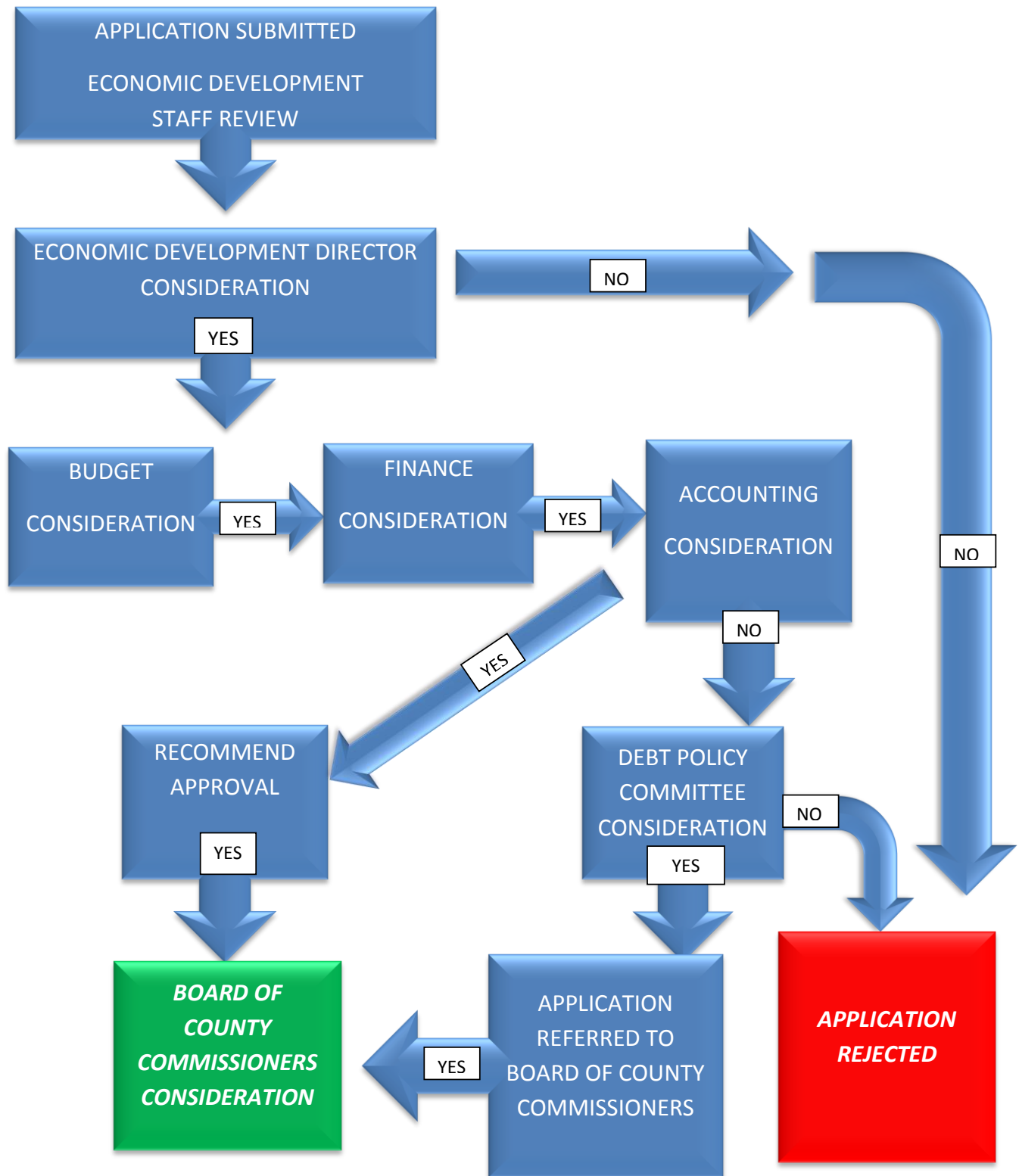


EXHIBIT C



BOARD OF COUNTY COMMISSIONERS Agenda Item Routing Schedule for 2014

BCC SUMMARY DUE TO COMM. ADMINISTRATOR	AGENDA REVIEW WEDNESDAY 9AM	8-DAY RULE-DUE IN MT BY 4:30 PM	COMMISSION MEETING
November 28, 2013 (Dec thru Feb.)	December 18, 2013	December 27, 2013	January 7, 2014
	January 8, 2014	January 17, 2014	January 28, 2014
	January 29, 2014	January 31, 2014	February 11, 2014
	February 12, 2014	February 14, 2014	February 25, 2014
	February 26, 2014	February 28, 2014	March 11, 2014
February 28, 2014 (March thru May)	March 12, 2014	March 14, 2014	March 25, 2014
	March 26, 2014	March 28, 2014	April 8, 2014
	April 9, 2014	April 11, 2014	April 22, 2014
	April 23, 2014	April 25, 2014	May 6, 2014
	May 7, 2014	May 9, 2014	May 20, 2014
May 30, 2014 (June thru Aug)	May 21, 2014	May 30, 2014	June 10, 2014
	June 11, 2014	June 13, 2014	June 24, 2014
	June 25, 2014	August 1, 2014	August 12, 2014
	August 13, 2014	August 15, 2014	August 26, 2014
August 29, 2014 (Sept thru Nov)	August 27, 2014	August 29, 2014	September 9, 2014
	September 10, 2014	September 12, 2014	September 23, 2014
	September 24, 2014	October 3, 2014	October 14, 2014
	October 15, 2014	October 17, 2014	October 28, 2014
	October 29, 2014	November 7, 2014	November 18, 2014
November 28, 2014 (December – Feb)	November 19, 2014	November 28, 2014	December 9, 2014
	December 17, 2014	January 2, 2015	January 13, 2015

The above schedule is subject to change. As Amended 12/31/13 yc

EXHIBIT D

Bernalillo County Economic Development Policy Requirements Acknowledgement Form

Instructions: Please print, sign and return this form along with the Economic Development application and Fee payment. You may submit by mail or hand delivery to:

Bernalillo County Economic Development Department
ATTN: Mayling Armijo, Director
415 Tijeras NW
Albuquerque, 87102

Bernalillo County Economic Development Policy Requirements

All entities that apply for a conduit debt issue from Bernalillo County must comply with the requirements of the Bernalillo County Economic Development Policy (available online at www.bernco.gov/xxx)

Applicant understands that:

1. The applicant is responsible for reading and complying with the Bernalillo County Economic Development Policy.
2. The applicant acknowledges that it does not have any outstanding Federal, State, and/or local tax obligations.
3. The applicant acknowledges that it shall pay Bernalillo County:
 - a. **A fee** of one-tenth of one percent of the face amount of the bonds. The fee shall not be less than \$2,500;
 - b. **Deposit:** \$5,000 to be applied against the independent analysis costs. If the cost of the analysis exceeds the deposit, the applicant shall pay the additional costs.
 - c. **Legal Fee Deposit:** \$2,500 (non-refundable). The Legal Fee Deposit will be deducted from the Origination Fee at closing.
 - d. **Annual Maintenance Fee:** 10 basis points on the principal amount outstanding.
 - e. **Other Fees:** All financial advisory fees and legal fees, including the applicant's legal counsel fees, bond counsel fees, special tax counsel fees (if required), and the County's counsel fees, are the responsibility of the applicant. Other financing expenses, such as title policies, are the responsibility of the applicant.

4. The applicant acknowledges that it will provide to the Bernalillo County Economic Development Department the following annual reports for the life of the project:
 - a. Job creation reports shall include the following information:
 - i. Number of newly created jobs;
 - ii. Affidavit from employees that they have resided in the State of New Mexico for a minimum of one continuous year at any time before beginning employment;
 - iii. Provide quarterly records of unemployment insurance payment for newly created jobs.
 - b. Certificate of Compliance. The applicant is in compliance with terms, provisions, and conditions of the lease with Bernalillo County
 - c. Completion Date:
 - d. Provide by June 30th of each year a revised amortization schedule of debt and any new debt issued during the year
 - e. Identify all parcel numbers associated with conduit financing
5. The applicant acknowledges that the amount of the Payment in Lieu of Taxes ("PILOT") to be paid by the Applicant is to be the abatement percentage of the total 20xx mill levy rate per \$1,000 of the taxable value of the property. The PILOT will remain constant for the life of the bond. Bernalillo County Accounting will invoice the applicant annually for the PILOT payment.

Acknowledgement:

I have reviewed the Conduit Debt Policy, acknowledge the requirements enumerated above, and within the policy.

Applicant Name: _____

By (Print Name): _____

By (Signature): _____

Its: _____

Date: _____

State of

County of

Signed or attested before me on (date) by name(s) of person(s).

SEAL Signature of notarial officer

My commission expires: _____

EXHIBIT E

Local Economic Development Article 10

5-10-1. Short title. (1993)

This act [5-10-1 to 5-10-13 NMSA 1978] may be cited as the "Local Economic Development Act".

History: Laws 1993, ch. 297, § 1.

5-10-2. Findings and purpose of act. (2007)

- A. The legislature finds that:
 - 1) development of the New Mexico economy is vital to the well-being of the state and its residents;
 - 2) it is difficult for municipalities and counties in New Mexico to attract and retain businesses capable of enhancing the local and state economy without the resources necessary to compete with other states and locales;
 - 3) municipalities and counties may need to be able to provide land, buildings and infrastructure as a tool for basic business growth and the introduction of basic business ventures into the state;
 - 4) it is in the best interest of the state, municipalities and counties to encourage local or regional solutions to economic development; and
 - 5) the access to public resources needs to be carefully controlled and managed for the continued and future benefit of New Mexico citizens.
- B. The purpose of the Local Economic Development Act is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the constitution of New Mexico to allow public support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of that act is to allow municipalities and counties to enter into joint powers agreements to plan and support regional economic development projects, including investments in arts and cultural districts created pursuant to the Arts and Cultural District Act [15-5A-1 to 15-5A-7 NMSA 1978].

History: Laws 1993, ch. 297, § 2; 2007, ch. 160, § 8.

5-10-3. Definitions. (2013)

As used in the Local Economic Development Act:

- A. "arts and cultural district" means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act [15-5A-1 through 15-5A-7 NMSA 1978];
- B. "cultural facility" means a facility that is owned by the state, a County, a municipality or a qualifying entity that serves the public through preserving, educating and promoting the arts and culture of a particular locale, including theaters, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations, fine arts organizations, studios and media laboratories and live-work housing facilities;
- C. "department" means the economic development department;

- D. "economic development project" or "project" means the provision of direct or indirect assistance to a qualifying entity by a local or regional government and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying entity; payments for professional services contracts necessary for local or regional governments to implement a plan or project; the provision of direct loans or grants for land, buildings or infrastructure; technical assistance to cultural facilities; loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the County infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity; grants or subsidies to cultural facilities; purchase of land for a publicly held industrial park or a publicly owned cultural facility; and the construction of a building for use by a qualifying entity;
- E. "governing body" means the city council, city commission or board of trustees of a municipality or the board of County commissioners of a County;
- F. "local government" means a municipality or County;
- G. "municipality" means an incorporated city, town or village;
- H. "person" means an individual, corporation, association, partnership or other legal entity;
- I. "qualifying entity" means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two or more of the following:
- 1) an industry for the manufacturing, processing or assembling of agricultural or manufactured products;
 - 2) a commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in Paragraph (5), (6) or (9) of this subsection, not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;
 - 3) a business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in Paragraph (5) or (9) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;
 - 4) an Indian nation, tribe or pueblo or a federally chartered tribal corporation;
 - 5) a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;
 - 6) a facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;
 - 7) a business that is the developer of a metropolitan redevelopment project;
 - 8) a cultural facility; and
 - 9) a retail business;
- J. "regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement; and

- K. "retail business" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in a municipality with a population of ten thousand or less.

History: Laws 1993, ch. 297, § 3; 1998, ch. 90, § 3; 1999, ch. 245, § 1; 2000, ch. 103, § 5; 2007, ch. 160, § 9; 2013, ch. 201, § 1.

5-10-4. Economic development projects; restrictions on public expenditures or pledges of credit. (2013)

- A. No local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act or as otherwise permitted by law.
- B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed ten percent of the annual general fund expenditures of the local government in that fiscal year. The limits of this subsection shall not apply to:
- 1) the value of any land or building contributed to any project pursuant to a project participation agreement;
 - 2) revenue generated through the imposition of the municipal infrastructure gross receipts tax pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978]; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;
 - 3) revenue generated through the imposition of a County infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;
 - 4) the proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;
 - 5) the proceeds of a revenue bond issue to which County infrastructure gross receipts tax revenue is pledged; or
 - 6) funds donated by private entities to be used for defraying the cost of a project.
- C. A regional or local government that generates revenue for economic development projects to which the limits of Subsection B of this section do not apply shall create an economic development fund into which such revenues shall be deposited. The economic development fund and income from the economic development fund shall be deposited as provided by law. Money in the economic development fund may be expended only as provided in the Local Economic Development Act or the Statewide Economic Development Finance Act.

- D. In order to expend money from an economic development fund for arts and cultural district purposes, cultural facilities or retail businesses, the governing body of a municipality or County that has imposed a municipal or County local option infrastructure gross receipts tax for furthering or implementing economic development plans and projects, as defined in the Local Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act, by referendum of the majority of the voters voting on the question approving the ordinance imposing the municipal or County infrastructure gross receipts tax before July 1, 2013 shall be required to adopt a resolution. The resolution shall call for an election to approve arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity before any revenue generated by the municipal or County local option gross receipts tax for furthering or implementing economic development plans and projects, as defined in the Local Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act, can be expended from the economic development fund for arts and cultural district purposes, cultural facilities or retail businesses.
- E. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of approving arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity eligible to utilize revenue generated by the Municipal Local Option Gross Receipts Taxes Act or the County Local Option Gross Receipts Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act.
- F. The question shall be submitted to the voters of the municipality or County as a separate question at a regular municipal or County election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. A special County election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections.
- G. If a majority of the voters voting on the question approves the ordinance adding arts and cultural districts and cultural facilities or retail businesses as an approved use of the local option municipal or County economic development infrastructure gross receipts tax fund, the ordinance shall become effective on July 1 or January 1, whichever date occurs first after the expiration of three months from the date of the adopted ordinance. The ordinance shall include the effective date.

History: Laws 1993, ch. 297, § 4; 1998, ch. 90, § 4; 2003, ch. 349, § 17; 2007, ch. 160, § 10; 2009, ch. 172, § 1; 2013, ch. 201, § 2.

5-10-5. Economic development department; technical assistance. (2007)

At the request of a local or regional government, the department shall provide technical assistance in the development of an economic development plan or economic development project or technical assistance to cultural facilities with respect to economic development projects.

History: Laws 1993, ch. 297, § 5; 2007, ch. 160, § 11.

5-10-6. Economic development plan; contents; publication. (2007)

- A. Every local or regional government seeking to pursue economic development projects shall adopt an economic development plan or a comprehensive plan that includes an economic development

component, and an economic development plan or comprehensive plan may include an analysis of the role of arts and cultural activities in economic development. The plan may be specific to a single economic development goal or strategy or may include several goals or strategies, including any goals or strategies relating to economic development through arts and cultural activities. Any plan or plan amendment shall be adopted by ordinance of the governing body of the local government or each local government of a regional government proposing the plan or plan amendment.

B. The economic development plan or the ordinance adopting the plan may:

- 1) describe the local or regional government's economic development and community goals, including any economic development goals with an arts and cultural component, and assign priority to and strategies for achieving those goals;
- 2) describe the types of qualifying entities and economic activities that will qualify for economic development projects;
- 3) describe the criteria to be used to determine eligibility of an economic development project and a qualifying entity to participate in an economic development project;
- 4) describe the manner in which a qualifying entity may submit an economic development project application, including the type of information required from the qualifying entity sufficient to ensure its solvency and ability to perform its contractual obligations, its commitment to remain in the community and its commitment to the stated economic development goals of the local or regional government;
- 5) describe the process the local or regional government will use to verify the information submitted on an economic development project application;
- 6) if an economic development project is determined to be unsuccessful or if a qualifying entity seeks to leave the area, describe the methods the local or regional government will use to terminate its economic assistance and recoup its investment;
- 7) identify revenue sources, including those of the local or regional government, that will be used to support economic development projects;
- 8) identify other resources the local or regional government is prepared to offer qualifying entities, including specific land or buildings it is willing to lease, sell or grant a qualifying entity; community infrastructure it is willing to build, extend or expand, including roads, water, sewers or other utilities; and professional services contracts by local or regional governments necessary to provide these resources;
- 9) detail the minimum benefit the local or regional government requires from a qualifying entity, including the number and types of jobs to be created; the proposed payroll; repayment of loans, if any; purchase by the qualifying entity of local or regional government-provided land, buildings or infrastructure; the public to private investment ratio; and direct local tax base expansion;
- 10) describe the safeguards of public resources that will be ensured, including specific ways the local or regional government can recover any costs, land, buildings or other thing of value if a qualifying entity ceases operation, relocates or otherwise defaults or reneges on its contractual or implied obligations to the local or regional government; and
- 11) if a regional government, describe the joint powers agreement, including whether it can be terminated and, if so, how the contractual or other obligations, risks and any property will be assigned or divided among the local governments who are party to the agreement.

C. The economic development plan shall be printed and made available to the residents within the local or regional government area.

History: Laws 1993, ch. 297, § 6; 1998, ch. 90, § 5; 2007, ch. 160, § 12.

5-10-7. Regional plans; joint powers agreement; regional government. (1993)

- A. Two or more municipalities, two or more counties or one or more municipalities and counties may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] to develop a regional economic development plan which may consist of existing local plans. The parties to the agreement shall be deemed a regional government for the purposes of the Local Economic Development Act.
- B. The joint powers agreement shall require that the governing body of each local government approve each economic development project. The agreement may also provide for appointment of a project manager who shall be responsible for the management of projects and project funds. The agreement may provide for a regional body consisting of representatives from the governing bodies of each local government that is a party to the agreement and may determine the powers and duties of that body in implementing the regional government's plan and projects.

History: Laws 1993, ch. 297, § 7.

5-10-8. Economic development project applications. (1993)

- A. After the adoption of an economic development plan by a local or regional government, a qualifying entity shall submit to the local or regional government an economic development project application.
- B. The application shall be on a form and require such information as the local or regional government deems necessary.

History: Laws 1993, ch. 297, § 8.

5-10-9. Project evaluation; department. (2007)

- A. The local or regional government shall review each project application, and projects shall be approved by ordinance.
- B. The local or regional government's evaluation of an application shall be based on the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application.
- C. The local or regional government may negotiate with a qualifying entity on the type or amount of assistance to be provided or on the scope of the economic development project.

History: Laws 1993, ch. 297, § 9; 2007, ch. 160, § 13.

5-10-10. Project participation agreement; duties and requirements. (2013)

- A. The local or regional government and the qualifying entity shall enter into a project participation agreement.

- B. The local or regional government shall require a substantive contribution from the qualifying entity for each economic development project. Public support provided for an economic development project shall be in exchange for a substantive contribution from the qualifying entity. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.
- C. The qualifying entity shall provide security to each local or regional government, the state or any other New Mexico governmental entity providing public support for an economic development project. The security shall secure the qualifying entity's obligations based on terms stated in the project participation agreement with the local or regional government and shall reflect the amount of public support provided to the qualifying entity and the substantive contribution expected from the qualifying entity.
- D. If a qualifying entity fails to perform its substantive contribution, the local or regional government shall enforce the project participation agreement to recover that portion of the public support for which the qualifying entity failed to provide a substantive contribution. The recovery shall be proportional to the failed performance of the substantive contribution and shall take into account all previous substantive contributions for the economic development project performed by the qualifying entity, based on the terms stated in the project participation agreement. The project participation agreement for an economic development project that uses public support provided by the state to a local or regional government shall include a recapture agreement for the state.
- E. The project participation agreement at a minimum shall set out:
 - 1) the contributions to be made by each party to the participation agreement;
 - 2) the security provided to each governmental entity that provides public support for an economic development project by the qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;
 - 3) a schedule for project development and completion, including measurable goals and time limits for those goals; and
 - 4) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory.

History: Laws 1993, ch. 297, § 10; 2013, ch. 43, § 1.

5-10-11. Project revenues; special fund; annual audit. (1993)

- A. Local or regional government revenues dedicated or pledged for funding or financing of economic development projects shall be deposited in a separate account. Separate accounts shall be established for each separate project. Money in the special account shall be expended only for economic development project purposes, which may include the payment of necessary professional services contract costs.
- B. In the case of a regional government, revenues of each local government dedicated or pledged for economic development purposes shall be deposited in a special account of that local government and may be expended only by that local government as provided by the regional government's economic development plan and joint powers agreement.

- C. The local or regional government shall provide for an annual independent audit in accordance with the Audit Act [12-6-1 to 12-6-14 NMSA 1978] of each special fund and project account. The audit shall be submitted to the local or regional government. The audit is a public record.

History: Laws 1993, ch. 297, § 11.

5-10-12. Plan and project termination. (1993)

- A. At any time after approval of an economic development plan, the governing body of the local government or the governing body of each local government in a regional government may enact an ordinance terminating the economic development plan and dissolving or terminating any or all projects. An ordinance repealing an economic development plan shall not be effective unless the ordinance provides for satisfying existing contracts and the rights of the parties arising from those contracts.
- B. Any unexpended and unencumbered balances remaining in any project fund or account upon repeal of a plan and termination or dissolution of a project may be transferred to the general fund of the local government holding the fund or account. In the case of funds or accounts of a regional government, the unexpended and unencumbered balances shall be divided among the local governments as provided in the joint powers agreement.

History: Laws 1993, ch. 297, § 12.

5-10-13. Limitations. (1993)

Nothing in the Local Economic Development Act shall be construed to affect any other requirements of the constitution or other laws regarding local government debt, issuance of bonds, use of tax revenues or the grant, lease or sale of land or other property.

History: Laws 1993, ch. 297, § 13.

EXHIBIT F

Bernalillo County LEDA Review Form			
Project _____ has been reviewed by both the Economic Development Department and Finance Special Projects. The project complies with the following criteria from Bernalillo County's Economic Development Financing Policy. Projects that do not meet the qualifications below shall be presented to Debt Policy Committee for review.			
Compliance Criteria		Compliance	
		Yes	No
1	Does project meet economic development project qualifications?		
2	Does project meet qualified entity test?		
3	Did project pay application fee and legal deposit?		
4	Does project result in new job creation?		
5	Does project conflict with county State LEDA Statue, Debt Policy , and/or Economic Development Financing Policy?		
6	Does this project create additional compliance reporting, project management, or unordinary activity for any county department?		
7	Does project utilize qualified form of collateral?		
8	Does the project have any State or Federal tax liens?		
Department Comments		Comment	
9	Comment from Economic Development		
10	Comment from Budget and Business Improvement		
11	Comment from Finance		
Approved: Economic Development Director			
Approved: Finance Special Projects			

EXHIBIT G

APPLICATION For LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) Project Approval

Name of Project	
Location of Project	
Company Name	
Contact Person	
Address	
Company Telephone	
Project Address	
Project Email	
Project Counsel	
Project Counsel Address	
Amount Requested	

Preface

The purpose of the Plan is to identify the project area and to present the plan and the uses to which the proceeds of the LEDA funds will be put if issued. This Plan is presented to demonstrate to the County of Bernalillo the public benefits of this project and to help the County evaluate its merit in comparison to other projects submitted. The applicant and its agent will endeavor to provide the County any additional information reasonably requested.

APPLICATION DESCRIPTION

I. GENERAL DESCRIPTION

II. SITE AND EXISTING CONDITIONS

A. Legal Description

The physical address is

B. Prevailing Site Conditions

C. Present Assessed Value

D. Present and Proposed Zoning

E. Renewable Energy

III. PROJECT PLAN

A. Information Concerning Applicant

B. Tax Issues

C. Information Concerning Products and Process

D. Competition

E. Effect on Existing Industry and Commerce during and after Construction

F. Land Acquisition

G. Description of Proposed Development

H. Infrastructure

I. Area Enhancement

J. Local Purchasing

K. Water Conservation

L. Relocation of Individuals or Businesses

M. Number and Types of Jobs Created

Specific terms of the employee benefit plans have not yet been identified. Below is a table of job classifications and average salary.

Position	Average Salary

N. Corporate Citizenship Policy/Plan

O. Management

IV. PROJECT FINANCING

A. Cost of Improvements, Bond Amount and Private Financing

B. Estimated Value After Completion

C. Feasibility

D. Construction Schedule

E. Issuance of Bonds